

CA Nos. 16-56057 & 16-56287

DATE OF DECISION: SEPTEMBER 28, 2018

JUDGES PAEZ AND IKUTA AND DISTRICT JUDGE VITALIANO

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MIKE SKIDMORE,
AS TRUSTEE FOR THE RANDY CRAIG WOLFE TRUST
Plaintiff-Appellant-Appellee

v.

LED ZEPPELIN, ET AL.,
Defendants-Appellees

AND

WARNER/CHAPPELL MUSIC, INC.,
Defendant-Appellee-Appellant

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HON. R. GARY KLAUSNER, DISTRICT JUDGE
CASE NO. 15-cv-03462-RGK (AGRx)

**MOTION OF 123 SONGWRITERS, COMPOSERS, MUSICIANS,
AND PRODUCERS, ALONG WITH NSAI AND SONA, FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF
DEFENDANTS/APPELLEES AT *EN BANC* REHEARING**

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I. INTRODUCTION

Pursuant to Ninth Circuit Rule 29-2(a) and (b), Amici 123 Songwriters, Composers, Musicians, and Producers, along with the Nashville Songwriters Association International and the Songwriters of North America hereby move for leave to file the concurrently-submitted amicus brief in support of Defendants-Appellees, Led Zeppelin, et al. in connection with the rehearing *en banc* in this case.

Amici previously sought and obtained leave of court to file an amicus brief in support of Defendants/Appellees' Petition for Panel Rehearing and Rehearing *En Banc*, and their brief was accepted and filed with the Ninth Circuit. However, only today did Amici learn that their amicus brief would not be considered by this *en banc* court, and another amicus brief would have to be separately filed, once the Petition for Rehearing was granted.

Ninth Circuit Rule 29-3 provides that “[a] motion for leave to file an amicus brief shall state that movant endeavored to obtain the consent of all parties to the filing of the brief before moving the Court for permission to file the proposed brief.” 9th Cir. Rule 29-3. Amici sought consent of all parties to file their amicus curiae. Defendants-Appellees Led Zeppelin et al. and Warner/Chappell Music, Inc., have consented to the filing of this brief. However, Plaintiff Skidmore has

declined to consent to the filing of this brief. Accordingly, Amici must seek leave to file their brief, and with this motion respectfully request that leave be granted.

II. INTEREST OF AMICI CURIAE AND REASONS WHY THE AMICUS BRIEF IS DESIRABLE AND WHY THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THIS CASE.

Amici consist of 123 songwriters, composers, musicians, and producers from the United States and other countries who create music in many different genres, which is protected under U.S. copyright law, and who could be adversely affected by the Ninth Circuit's decision in this case. Amici also consist of the Nashville Songwriters Association International, which consists of approximately 5,000 members, and the Songwriters of North America, which consists of several hundred members.

An amicus brief is desirable in this case because the brief demonstrates and elucidates the effect of the panel's decision, if adopted by this *en banc* court, on all songwriters, composers, musicians, and producers in the United States and around the world. Whereas the Brief filed by Defendants-Appellees focuses on the errors in the panel's decision, this amicus brief will broaden its scope to include the

decision's wide-ranging impact. Amici, whose music entertains and enriches the lives of countless people worldwide, will therefore undoubtedly be affected by, and consequently have a significant interest in, the outcome of this critically important case.

Moreover, these issues are directly relevant to the disposition of the case because of the importance of judicial clarification in determining whether common place elements in songs are protected by copyright, which if true, will create significant confusion for songwriters. Amici are concerned about the potential adverse impact on their own creativity, on the creativity of future artists, and on the music industry in general, if the panel's opinion in this case is adopted by this *en banc* court.

III. CONCLUSION

Accordingly, Amici respectfully request leave of Court to file the accompanying amicus curiae brief in support of Defendants-Appellees in connection with the *en banc* rehearing.

Dated: July 30, 2019

Edwin F. McPherson
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By: /s/ Edwin F. McPherson
EDWIN F. MCPHERSON
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit, by using the appellate CM/ECF system on July 30, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 30, 2019

/s/ Edwin F. McPherson
EDWIN F. McPHERSON